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September 21, 2009

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VIA E-MAIL

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th St. and Constitution Ave. NW
Washington, DC 20551

Re: Docket No. R-1364, Regulation Z Interim Final Rule

Dear Ms. Johnson:

On behalf of our client, ThinkCash, Inc., we welcome this opportunity to comment on the interim final rule (the “Interim Final Rule”) adopted by the Board of Governors of the Federal Reserve System (the “Federal Reserve” or the “Board”) on July 15, 2009 implementing certain provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24 (“Credit CARD Act”).

ThinkCash is an online marketer of open and closed-end consumer credit products underwritten by federally insured depository institutions. In reviewing the recently enacted Credit CARD Act and the Interim Final Rule, ThinkCash is concerned about their potential effect on these credit products. We therefore submit the following comments for your Office’s consideration in connection with this rulemaking process.

Section 106 of the Credit CARD Act addresses the timing of payment requirements. Specifically, this provision amends section 163 of the Truth in Lending Act to provide

(a) TIME TO MAKE PAYMENTS.—A creditor may not treat a payment on an open end consumer credit plan as late for any purpose, unless the creditor has adopted reasonable procedures designed to ensure that each periodic statement including the information required by section 127(b) is mailed or delivered to the consumer not later than 21 days before the payment due date.

(b) GRACE PERIOD.—If an open end consumer credit plan provides a time period within which an obligor may repay any

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portion of the credit extended without incurring an additional finance charge, such additional finance charge may not be imposed with respect to such portion of the credit extended for the billing cycle of which such period is a part, unless a statement which includes the amount upon which the finance charge for the period is based was mailed or delivered to the consumer not later than 21 days before the date specified in the statement by which payment must be made in order to avoid imposition of that finance charge.

The provision of the Interim Final Rule amending Regulation Z to implement Section 106 states “[c]reditors must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date and the date on which any grace period expires.”¹ The payment due date, under official staff commentary to the regulation, is the date by which payment must be made to avoid an increase in an annual percentage rate as a penalty, reporting to a credit reporting agency or assessing a fee based on the consumers’ failure to make a payment by a specified date.²

Clear consumer need and demand exist for non-payday open-end credit products with terms of less than 21 days. Yet the notice section of the Interim Final Rule does not appear to contemplate such credit products.

ThinkCash requests clarification of how the Interim Final Rule affects such credit products, with specific focus on how lenders may provide compliant notice to the customers of these products. In this regard, ThinkCash requests the Federal Reserve to employ authority under section 105(a) of the Truth in Lending Act to except a limited class of transactions from the requirement to mail or deliver a periodic statement twenty-one days in advance of the payment due date. Alternatively, an exception to the twenty-one day requirement could be made for periodic statements provided electronically at least fourteen days before a payment due date for credit products with a billing cycle under twenty-one days. Regulatory history supports the propriety of such an exception.

ThinkCash specifically requests the Board consider a change in accordance with amendments to Regulation Z promulgated on January 29, 2009. In that rulemaking, the Federal Reserve adopted a prohibition against treating a payment as late unless the consumer has had a reasonable amount of time to make the payment.³ This regulation also established a twenty-one

¹ *Id.* at 36094.

² *Id.* at 36096.

³ 74 Fed. Reg. 5498, 5511 (Jan. 29, 2009).

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day safe harbor provision for compliance with the “reasonable amount of time” requirement.⁴ A stated purpose of the safe-harbor provision is to “allow *seven days* for the periodic statement *to reach the consumer* by mail, *seven days* for the consumer *to review the statement* and make payment, and *seven days* for that payment *to reach the institution* by mail.”⁵

As discussed in the Federal Register Preamble to the January 29, 2009 final rulemaking (the “Preamble”), a number of comments submitted in that rulemaking addressed a concern similar to that of ThinkCash: namely, compliance with a twenty-one day safe harbor may “lead to consumer confusion because the institution would not have sufficient time to reflect timely payments on the subsequent periodic statement.”⁶ In explaining why such possible confusion did not warrant departure from a twenty-one day safe harbor, the Board implied in the Preamble that failing to credit payments prior to issuance of a subsequent periodic statement would be rare. That is, the Board stated that this problem may be “possible... in some narrow set of circumstances” where an institution “*may* not be able to reflect a timely payment on the period statement.”⁷ However, in reaching this conclusion, it does not appear that the Board addressed the specific situation of an open-end credit plan with a billing cycle of twenty-one days or less, especially where the statement is delivered electronically no later than 14 days before the payment is due. ThinkCash respectfully requests the Board to adopt a limited exception to this requirement under §105(a) of the Truth in Lending Act to “provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title[.]”⁸ Transactions involving an open-end credit product with a billing cycle of less than twenty-one days, where a consumer has elected to receive electronic statements, should be exempt from the twenty-one day requirement in the interim rule if the lender has reasonable procedures to ensure that the consumer receives the periodic statement no later than fourteen days before the due date. Electronic delivery of a periodic statement fourteen days before the due date still provides the consumer seven days to review the statement and seven days for the payment to reach the lender by mail, timeframes fully consistent with the reasoning supporting the January safe harbor. Such a rule would avoid the confusion certain to arise under the Interim Final Rule and would appear consistent with prior Board positions.

⁴ *Id.* at 5561.

⁵ 73 Fed. Reg. at 28913(emphasis added)

⁶ 74 Fed. Reg. 5511.

⁷ *Id.* (emphasis added).

⁸ 15 U.S.C. § 1604(a).

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In anticipation of future regulations under the Credit CARD Act, ThinkCash also requests clarification on certain marketing limitations contained in Section 301 of the Act. This section modifies Section 127(c) of the Truth in Lending Act to state

(A) PROHIBITION ON ISSUANCE.—No credit card may be issued to, or open end consumer credit plan established by or on behalf of, a consumer who has not attained the age of 21, unless the consumer has submitted a written application to the card issuer that meets the requirements of subparagraph (B).

With this provision, the Credit CARD Act appears to limit the ability to open accounts for persons under the age of twenty-one; however, the application of this provision to offerors of open-end credit is ambiguous. Specifically, the Act states that “[n]o credit card may be issued to, or open end consumer credit plan established by or on behalf of, a consumer who has not attained the age of twenty-one, unless the consumer has submitted a written application to the card issuer that meets [certain] requirements.” Due to the statutory ambiguity, ThinkCash requests clarification on whether this provision relates only to issuers of credit cards or to underwriters of all open-end credit products.

ThinkCash appreciates clarification of these issues and how the provisions of the Credit CARD Act will affect the wide variety of open-end consumer credit products. If you have any questions, please contact me.

Sincerely yours,

A handwritten signature in black ink that reads "Carol R. Van Cleef" followed by a stylized "RCA" monogram.

Carol R. Van Cleef
Partner